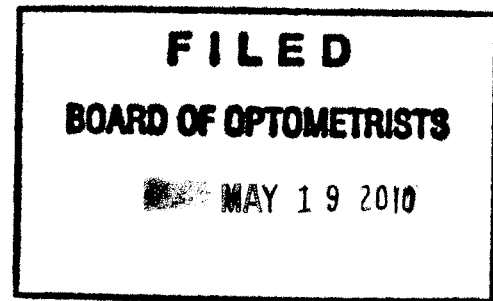


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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF OPTOMETRISTS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
:
RANDOLPH KINKADE, O.D. :
Licensed No. 270A00614400 :
:
TO PRACTICE OPTOMETRY :
IN THE STATE OF NEW JERSEY :

Administrative Action

MODIFIED CONSENT ORDER

This matter was opened to the New Jersey State Board of Optometrists (hereinafter "the Board") upon review of two advertisements which informed the public that the Respondent assists individuals with vision loss and that he practices in Bergen and Essex Counties in New Jersey. One ad ran on September 17, 2008 in the Community Life newspaper located in Westwood, New Jersey and the second article ran in The Record of Bergen County on Monday October 20, 2008 indicating that the respondent provided bioptic glasses for persons with macular degeneration, specializes in low vision rehabilitation optometry and that Dr. Kinkade had offices in Northern New

Jersey. Both advertisements contained an "800" telephone number that interested individuals could call for a "free telephone consultation" by Dr. Kinkade.

The respondent appeared at an investigative inquiry on May 20, 2009 with his attorney, Robert T. Plevy, Esquire. He testified that in 2008 he applied for a license to practice optometry in New Jersey. The application for licensure submitted by the respondent on May 6, 2008 indicated that the respondent applied for "non-active paid status." The official records of the Board demonstrate that Dr. Kinkade's license remains on inactive status and that as of April 30, 2009 his license has expired.

Dr. Kinkade explained that at the time that he applied for a license to engage in the practice of optometry he did not have an office location in New Jersey. He testified that he obtained an office location in approximately July or August of 2008 at the office of Mary Cardomo, O.D. located at 74 South Paramus Road, Paramus, New Jersey. He also confirmed that he had access to Dr. Cardomo's Maplewood, New Jersey office but that he did not see any patients at the Essex County office. Upon additional questioning, Dr. Kinkade informed the Board that the "800" phone number in the advertisements referred consumers to his optometric office in Connecticut. He described the telephone consultation referred to in the advertisements as consisting of a series of questions regarding the quality of life of the patients, description of their eye condition, how much they could see, etc. This information was used by the respondent to assess whether the caller would benefit from his services. The telephone consultation was free of charge to the caller.

Dr. Kinkade testified that he saw approximately eight patients at the Paramus location. After the investigative inquiry he submitted information indicating that he actually provided services to six patients. He also testified that he did not conduct an eye examination as described by the Board's regulations but conducted a "functional evaluation." The Respondent defined the

functional evaluation he performed as including a discussion with the patients about their quality of life, difficulties with performing activities of daily living, writing, reading. The respondent charged \$295 for the functional evaluation. He diagnosed the patient's eye condition based on the patient's understanding of their eye condition and he did not perform an independent eye examination to confirm the diagnosis or assess the health of the eye.

The Board finds that the respondent's actions constituted the practice of optometry and that the respondent violated N.J.S.A. 45:12-9 as his license status was listed as inactive during the relevant period which prohibited him from actively engaging in the practice of optometry. The consultations and functional evaluations that the respondent performed on patients in the Bergen County office constituted the practice of optometry in violation of N.J.S.A. 45:12-1 and N.J.S.A. 45:12-19; and violated the standards of practice in optometry in that the respondent failed to either independently evaluate the health condition of the eye or obtain patient records from the patients' primary eye care providers to confirm the diagnosis or the eye health condition of the patients before he prescribed certain vision devices. The Board also found that the respondent's actions violated the minimum examination regulation at N.J.A.C. 13:38-2.1, as he prescribed vision devices for approximately six patients based on a "functional evaluation" without conducting a minimum eye evaluation to assess the individuals eye health and eye condition.

These facts also establish basis for action pursuant to N.J.S.A. 45:1-21(d) as prescribing vision devices without performing an evaluation of the individual's eye condition constitutes repeated acts of negligence. It appearing that respondent desires to resolve this matter without admissions and without recourse to formal proceedings and for good cause shown:

IT IS ON THIS 19th DAY OF MAY 2010,
HEREBY ORDERED AND AGREED THAT:

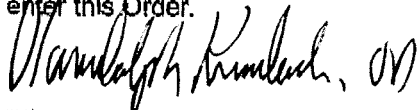
1. Respondent's license to engage in the practice of optometry in New Jersey expired on April 30, 2009 and is suspended pursuant to N.J.S.A. 45:1-7.1(b).
2. Respondent shall cease and desist from the active practice and the advertising of the practice of optometry in New Jersey and agrees to permanently surrender his license to practice optometry in New Jersey upon the filing of this Order.
3. Respondent is formally reprimanded for engaging in the practice of optometry while in an inactive license status.
4. Respondent is hereby assessed a penalty of Two thousand and Five Hundred dollars (\$2500.00). This total constitutes a penalty of \$1500.00 for unlicensed practice violation of N.J.S.A. 45:12-1 and 45:12-19 and \$1000.00 for violation of N.J.S.A. 45:1-21(d) and N.J.A.C. 13:38-2.1 in that he failed to independently evaluate the condition of the eye by performing a minimum eye examination. Said penalty shall be due and owing within in equal installments payments over an 18 month period. Payment shall be made payable to the N.J. State Board of Optometrists by certified check or money order and sent to the attention of LIsa Affinito, Executive Director, 124 Halsey Street, P.O. Box 45012, Newark, New Jersey 07101. Respondent shall contact LIsa Affinito, Executive Director, to arrange for commencement of the installment payment plan.
5. Respondent is hereby assessed the costs of the investigation to the State in this matter in the amount of \$194.50. Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board in installment payments over an 18 month period to begin within thirty days of the filing of this Consent Order and shall be sent to the attention of the Executive Director as set forth in paragraph four above.

6. Respondent shall reimburse the six individuals for the functional evaluations he performed in New Jersey the full costs of the consultation fee in the amount of \$295 for each patient. Checks shall be made payable to S. K., G. P., F. M., A. W., T. T., and B. V., whose names are known to the respondent, in the amount of \$295.00 each and are to be submitted by Respondent to Lisa Affinito, Executive Director at the address listed in paragraph four above immediately upon the signing of this consent order.
7. Failure to remit any payment as required by this Order will result in the filing of a certificate of debt and such other proceedings as are permitted by law.
8. Respondent shall return the certificate of registration and any wall certificate that he may have received immediately upon the filing of this Order.

NEW JERSEY STATE BOARD OF OPTOMETRISTS

By: Mitchell Fink, O.D.
President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.



Randolph Kinkade, O.D.

This Order is agreed to as to form and entry.



Robert t. Plevy, Esq.